

PATENT
Attorney Docket No.: PD-N96055
Customer No.: 020991

REMARKS

Reconsideration and allowance of the subject application are respectfully solicited.

Claims 78 through 134 are pending, with Claims 78, 87, 99, 127, 129, 130, 133, and 134 being independent. Claims 78, 79, 83, 85, 87, 91, 99, 100, 102, and 127 through 132 have been amended. Claims 133 and 134 have been added.

Claims 78 through 80, 82 through 86, 88 through 99, 101, 103 through 113, 115 through 123, 125 through 127, and 10 were rejected under 35 U.S.C. § 103 over U.S. Patent Application Publication No. 2001/0007552 A1 (Schiff, et al.) in view of U.S. Patent No. 5,886,988 (Yun, et al.). Claims 81, 87, 100, 102, 114, 124, 128, 129, 131, and 132 were rejected under 35 U.S.C. § 103 over Schiff, et al. in view of Yun, et al., and further in view of U.S. Patent Application Publication No. 2002/0012332 A1 (Tiedemann, Jr., et al.). (The Official Action grouped Claim 102 with the first rejection rather than the second rejection; however, it is understood that the Official Action intended to group Claim 102 with the second rejection since it recites the feature discussed at page 7 of the Official Action with reference to the second rejection.) All rejections are respectfully traversed.

Turning first to independent Claims 87, 129, 133, and 134, Claims 87 and 129 have been rewritten in independent form, and Claims 133 and 134, formulated upon the basis thereof but omitting the recitation that the receiver effects the selection, have been added. Applicant is submitting concurrently herewith a Declaration Under 37 C.F.R. § 1.131 executed by the undersigned regarding those claims, which Declaration is respectfully to obviate the rejections based upon Tiedemann, Jr., et al. MPEP 715, 715.02, 715.04, 715.07. Favorable consideration is earnestly solicited. It is further

PATENT
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respectfully submitted that there has been no showing of any indication of motivation in the cited documents that would lead one having ordinary skill in the art to arrive at the claimed features.

Turning next to independent Claims 78, 99, 127, and 130, each of those claims variously recites determining the load factor of the first satellite communication channel and the load factor of the second satellite communication channel, and comparing the load factor of the first satellite communication channel to the load factor of the second satellite communication channel to determine if the load factor of the first satellite communication channel is lower than the load factor of the second satellite communication channel, wherein when the first satellite communication channel is selected, the selection switches from the first satellite communication channel to the second satellite communication channel in response to a determination that both of the following conditions are satisfied: (i) signal strength is above a predetermined value and (ii) comparison of the load factor of the first satellite communication channel to the load factor of the second satellite communication channel determines that the load factor of the second satellite communication channel is lower than the load factor of the first satellite communication channel (with Claims 78 and 99 requiring that the first satellite communication channel having a bit rate lower than that of the second satellite communication channel, and Claims 99 and 130 requiring that the first satellite communication channel having a power higher than that of the second satellite communication channel).

PATENT
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However, Applicant respectfully submits that none of Schiff, et al., Yun, et al., and Tiedemann, Jr., et al., even in the proposed combinations, assuming, arguendo, that the documents could be combined, discloses or suggests at least the above-discussed claimed features as recited, inter alia, in Claims 78, 99, 127, and 130. In this regard, the taking of Official Notice in the Official Action, and the assertion without citation to a reference that various claimed features are "obvious", are respectfully traversed in the absence of a cited reference, which reference or references Applicant respectfully requests be provided for his review. MPEP 2144.03. Furthermore, Applicant respectfully notes that the Official Action does not appear to address the "power" recitation of Claims 99 and 130. It is further respectfully submitted that there has been no showing of any indication of motivation in the cited documents that would lead one having ordinary skill in the art to arrive at the above-discussed claimed features.

The dependent claims are also submitted to be patentable because they set forth additional aspects of the present invention and are dependent from independent claims discussed above. For example, Claim 88 recites that the receiver transmits to the transmitter an indication as to which of the first and second satellite communication channels has been selected, the selection being made by the receiver. Claim 89 recites that the receiver transmits the indication to the transmitter via a telephone line, a packet network, or the internet. Claim 90 recites that the receiver transmits the indication to the transmitter via satellite return channel. Claim 92 recites that the transmitter transmits the load factor. Claim 98 recites that the load factor is a function of the load level of the channel and a bit rate. Applicants respectfully submit that none of the cited documents, even in the proposed combinations, discloses or

PATENT
Attorney Docket No.: PD-N96055
Customer No.: 020991

suggests at least the above-discussed features as recited in combination with their respective independent claims. In this regard, the Official Action does not provide a cited reference for any of these features, and does not appear to address several of them, e.g., Claims 89 and 98 among others. Therefore, separate and individual consideration of each dependent claim is respectfully requested.

REQUEST FOR INTERVIEW

If any questions remain, Applicant respectfully requests that the Examiner contact Applicant's undersigned representative, John T. Whelan, at (301) 428-7172.

REQUEST FOR ENTRY OF AMENDMENT

This Amendment After Final Rejection is an earnest attempt to advance prosecution and reduce the number of issues, and is believed to clearly place this application in condition for allowance. Furthermore, Applicant respectfully submits that a full appreciation of these amendments will not require undue time or effort given the Examiner's familiarity with this application. Moreover, this Amendment was not earlier presented because Applicant earnestly believed that the prior Amendment placed the subject application in condition for allowance. Accordingly, entry of this Amendment under 37 C.F.R. § 1.116 is respectfully requested.

PATENT
Attorney Docket No.: PD-N96055
Customer No.: 020991

CONCLUSION

Applicant submits that this application is in condition for allowance, and a Notice of Allowance is respectfully requested.

Applicant's undersigned attorney may be reached at (301) 428-7172. All correspondence should continue to be directed to our below-listed address.

Respectfully submitted,



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PATENT
Attorney Docket No.: PD-N96055
Customer No.: 020991

I hereby certify that this correspondence is being deposited with the United States Postal Service as first-class mail in an envelope addressed to the Commissioner for Patents, Washington, D.C. 20231 on April 2, 2003.


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